IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)

Description of Case

Date of decision: 19.05.2006

Criminal Appeal No. 600 of 2001
(Old No. 1070 of 1989)

Mohan Ram
S/o Shri Chandra Ram
R/o Village Ghoothi
Patti Latkot
District – Pithoragarh ……..Appellant

Versus

State of Uttar Pradesh ……Respondent

Mr. Dharm Veer Sharma, Senior counsel with Mr. B.S. Parihar, Advocate for the appellant.
Mr. D.K. Sharma, Government Advocate for the State.

~~A.F.R. (Approved for Reporting)~~
Not approved for reporting

Initials of Judges

Date: 19.05.2006

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

Judgment Reserved

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Coram: Hon'ble Rajeev Gupta, C.J,
Hon'ble Prafulla C. Pant, J.

Per: Hon'ble Prafulla C. Pant, J.

This appeal, preferred under Section 374 (2) of Code of Criminal Procedure, 1973, is directed against the judgment and order dated 28.03.1989, in Sessions Trial No. 32 of 1988, passed by learned Sessions Judge, Pithoragarh, whereby appellant Mohan Ram has been convicted under Section 302 of Indian Penal Code, 1860 and sentenced to life imprisonment.

2. The prosecution story in brief is that deceased Smt. Haruli Devi was wife of appellant Mohan Ram. They got married about one year before the date of the incident. P.W. 6 –Chandra Ram is the father of the deceased Haruli Devi. He lodged a First Information Repot (Exh. A-17) on

18.06.1988 with Kanungo, Nachani, Tehsil Munshiyari, alleging that his daughter Haruli Devi has been murdered and burried by his son-in-law, appellant- Mohan Ram. (In Certain areas of Uttaranchal, Revenue Officers have police powers to register and investigate the crimes). It is also alleged in the First Information Report that appellant Mohan Ram used to ill-treat and beat his wife. On the basis of said report, a check report (Exh. A-1) was prepared by the Supervisory Kanungo and crime No. 2 of 1988 was registered under Section 302/201 of Indian Penal Code against the appellant Mohan Ram. During investigation of the crime, it came to light that about a month before the death of the incident, deceased Haruli Devi went to her parents house with appellant Mohan Ram in village Samkot where in the presence of the parents of the deceased, Mohan Ram quarreled with Haruli Devi and gave her beating and left for his village Guthi, leaving Haruli Devi in her parents house. However, on the third day of the said incident, mother of appellant Mohan Ram came to the house of the parents of the deceased and took her back to her husband's village Guthi where on 11.06.1988, at about 7:00 P.M., appellant Mohan Ram committed murder of his wife Haruli Devi. He (appellant) without informing about the death of his wife to her parents in collusion with his brother Kishan Ram and uncle Mani Ram, hurriedly buried the dead body of the deceased. On 17.06.1988, P.W. 6 Chandra Ram, father of the deceased asked his brother-in-law, Roop Ram (P.W. 7) to enquire about the welfare of his daughter Haruli Devi. Roop Ram when made enquiries, came to know from one Gopal Ram on 17.06.1988 that Haruli Devi has been murdered and buried. The said information was passed on by Roop Ram

P.W. 7 to his brother-in-law (Saarhoo) Chandra Ram, who filed First Information Report on 18.06.1988 with the Kanungo, Nachani. During investigation, P.W. 5 Mohan Ram, Kanungo, got the dead body dug out from Kafal Katia Dhar (a place 1 Km. away from appellant's village) on pointing out of convict/appellant Mohan Ram and prepared the Inquest Report (Exh. A-4) and sent the dead body for post mortem examination. The post mortem examination was conducted on 20.06.1988 at District Headquarter-Pithoragarh by P.W. 8 Dr. D.C. Awasthi who found following ante mortem injuries on the dead body:-

1. **Contusion on the right side of the neck 4cm x 2 cm just below and behind the angle of mandible, on cutting dark echymosis present.**
2. **Contusion 6cm x 4cm over the right side chest lower part 5cm away from the Xiphi sternam. On cutting dark echymosis present.**

On internal examination of the body, the Medical officer found right pleural cavity of the right lung containing 500 ml. Of blood.

He further found lobe on right lung lacerated wound 3cm X 2cm X 2cm deep. It was further found that right lobe of the liver superior surface having two lacerated wounds of following size:-

1. **2cm X 3cm X 3cm deep, and**
2. **3cm X 2cm X 3cm deep.**

In the opinion of Doctor, the cause of death was shock and haemorrhage as a result of aforesaid ante mortem injuries.

The Medical Officer prepared the post mortem report (Exh. A-18).

3. On investigation, the Investigating Officer found that appellant Mohan Ram committed murder of his wife Haruli Devi and with the help of his real brother Kishan Ram and uncle Mani Ram, got buried the dead body to conceal it and submitted charge sheet (Exh. A-13) against the appellant Mohan Ram, with co-accused Kishan Ram and Mani Ram. Learned Chief Judicial Magistrate registered the charge sheet on 17.09.1988. after giving necessary copies to the accused persons, the case was committed by he Magistrate to the court of Sessions, for trial of the accused persons. Learned Sessions Judge, framed charges under section 302 and that of 201 read with Section 34 of I.P.C. against Mohan Ram and further framed charge against accused Kishan Ram and Mani Ram under Section 201 read with Section 34 of Indian Penal Code. All the three accused pleaded not guilty and claimed to be tried. Thereafter, the prosecution got examined P.W.1 Kumer Singh, P.W.2 Aan Singh, P.W.3 Keshar Ram, P.W. 4 Chanchal Ram, P.W. 5 Mohan Ram – Investigating Officer, P.W. 6 Chandra Ram- informant, P.W. 7 Roop Ram and P.W. 8 Dr. D.C. Awasthi- Medical Officer who conducted the post mortem examination. In the form of documentary evidence, apart from First Information Report (Exh. A-17), its Check Report (Exh. A-1), Memo of recovery of dead body (Exh. A-2), Site Plan (Exh. A-3), Inquest Report (Exh. A-4), Sketch of dead body (Exh. A-5), Sample seal (Exh. A-6), Police form No. 13 (Exh. A-7), Police form No. 34 i.e. letter to the Chief Medical Officer requesting for post mortem examination of the dead body (Exh. A-8), Site Plan (Exh. A-

11) and Memo of recovered clothes (Exh. A-12), were produced. Post mortem report (Exh. A-18) was also got proved by the prosecution. The oral as well as documentary evidence were put to the accused persons under section 313 of Code of Criminal Procedure, 1973. in their reply to their evidence adduced by the prosecution, the accused persons have not denied death of Haruli Devi. However, they have alleged that they were falsely implicated in the crime. With regard to the prosecution evidence regarding conduct of accused Mohan Ram, it has been replied by him that he had 'no knowledge'. However, it is stated in reply to question No. 26 by appellant Mohan Ram that information was sent to the present house of the deceased. But no evidence in defence was given to that effect. After hearing the prosecution and the defence, learned Sessions Judge, found accused Mani Ram and Kishan Ram not guilty of charge framed under section 201 of Indian Penal Code and they were acquitted of the charge. However, accused Mohan Ram (appellant) was found guilty o the offence punishable under section 302 of Indian penal Code and was convicted and sentenced to life imprisonment. (However, he was not held guilty of the offence punishable under section 201/34 of Indian penal Code). Appellant, aggrieved by the order of conviction and sentence against him, has filed this appeal.

4. We heard learned counsel for the appellant and learned Government Advocate and perused the entire record.

5. Before further discussions, it is pertinent to mention here that it is not a case of direct evidence but a case of circumstantial evidence. As such, this Court has to see

whether the prosecution has been able to prove the circumstances alleged by it and whether the chain of circumstances is so complete as to made the Court to believe that appellant and none else has committed murder of Haruli Devi. Following are the circumstances brought on record by the prosecution against the appellant Mohan Ram:-

1. Deceased Haruli Devi was wife of appellant Mohan Ram and was in her company before her death.
2. Appellant Mohan Ram used to beat his wife and has done so even in her parents house.
3. On the date of the incident, at about 7:00-7:30 P.M., P.W. 1 Kumer Singh heard shrieks of some female voice from 100 yards aerial distance across his house.
4. Death of Haruli Devi was not natural but homicidal.
5. Ante mortem injuries found on the person of the deceased at the time of post mortem examination and cause of death according to P.W. 8 Dr. D.C. Awasthi was shock and haemorrhage.
6. Dead body of Haruli Devi was hurriedly buried.
7. No information of death of his wife was given by appellant Mohan Ram to the parents of his wife, thought the distance of her parents house was only 10 miles.
8. No information was given to the police/revenue officers (having powers of police) before burial of deceased.
9. Appellant Mohan Ram kept quite for more than a week and after about a week on 17.06.1988, P.W. 6 Chandra Ram, father of the deceased came to know of death of her daughter through his brother-in-law

P.W. 7 Roop Ram went next morning to the village o in-laws of his daughter and lodged First Information Report (Exh. A-17) with the Supervisory Kanungo.

10. On 18.06.1988, after the information was received and the crime registered, the Investigating Officer-P.W. 5 Mohan Ram, got the dead body recovered on pointing out of appellant Mohan Ram from the place Kafal Katia Dhar after getting the body dug out.

6. P.W.1 Kumer Singh has stated that on the date of the incident, he heard shrieks of female voice at about 7:00-7:30 P.M. This witness has stated that P.W. 2 Aan Singh was also with him P.W. 2 Aan Singh only corroborated the fact that some voice was heard but he could not identify the voice. This witness was got declared hostile by the prosecution. P.W. 3 Keshar Ram has stated that after the death of Haruli Devi on next day, in the morning he went to appellant's (Mohan Ram) house and saw dead body lying there. This witness belongs to village Guthi i.e. the village of Mohan Ram (appellant). The witness has stated that he advised accused Kishan Ram to report the matter to Patwari but this witness did not corroborate the prosecution story in full and stated that Sabhapati of the village advised accused Mani Ram that here is no need to inform the police. This witness was also got declared hostile by the prosecution. P.W.4 Chandra Ram has also corroborated the fact that on 12.06.1988, in the morning hours he went to house of accused Kishan Ram (real brother of appellant Mohan Ram) and he saw the dead body of Haruli Devi lying there. However, this witness did not corroborate the story of

prosecution t the extent that accused persons, to conceal the dead body, laid it to rest. On this, this witness was also got declared hostile by the prosecution. P.W. 5 Mohan Ram, Investigating Officer, has stated that on receiving the information from P.W. 6 Chandra Ram, he started investigation, arrested appellant Mohan Ram and got dug out the dead body of Haruli Devi on pointing out of the appellant from place Kafal Katia Dhar. After recovery of the dead body, he got prepared recovery memo of the dead body (Exh. A-9), Inquest Report (Exh. A-4), Sketch of dead body (Exh. A-5), Sample seal (Exh. A-6), police form No. 13 (Exh. A-7), Police form No. 34- letter to the Chief Medical Officer requesting for post mortem examination (Exh. A-8). He further states that thereafter he sent the dead body for post mortem examination. P.W. 5 Mohan Ram, Kanungo, who investigated the crime, further states that after recording the statements of the witnesses, he submitted the charge sheet (Exh. A-13) against all the three accused namely- Mohan Ram, Mani Ram and Kishan Ram.

7. P.W. 6 Chandra Ram is father of the deceased Haruli Devi, who has stated that his daughter (deceased) was married to accused Mohan Ram about a year before the incident. He further states that when she used to come to her parents house, she told that her husband beats her. It is further stated by him that about a month before the date of the incident, accused Mohan Ram along with his wife Haruli Devi (deceased) came to his house and he quarreled with his wife and gave beating to her. Thereafter, is stated by the witness that Mohan Ram (appellant) left his wife and went to his home. According to this witness, after three days, mother

of Mohan Ram came and took Haruli Devi back to her in-laws place. P.W. 6 Chandra Ram further states that after a month of this incident, he asked his brother Roop Ram to enquire about the welfare of his daughter. The witness further states that Roop Ram told him in the evening on that day, he met one Gopi Ram who told that Haruli Devi has been killed and hr dead body has been buried. The witness (P.W. 6) further states that on next day i.e. on 18.06.1988, Kanungo went to village Guthi and arrested Mohan Ram. According to P.W. 6 Chandra Ram on pointing out of Mohan Ram (appellant), the dead body of Haruli Devi was recovered. P.W. 7 Roop Ram, brother-in-law of the informant corroborates the story narrated by P.W. 6 Chandra Ram. P.W. 8 Dr. D.C. Awasthi, who conducted the post-mortem examination on 20.06.1988 at about 4:15 P.M. has narrated in his statement that ante mortem injuries as mentioned above were found on the body of the deceased, the dead body was in a highly decomposed condition and the death could have occurred on 11.06.1988 at about 7:P.M. He proved report Exh. A-18 prepared by him.

8. From the above evidence, it is clear that prosecution has been able to prove the circumstances mentioned above. The chain of the ten circumstances is complete and from the circumstances as established on the record, we are of the view that he only inference which can be derived is that it is Mohan Ram (appellant) none else who had committed murder of Haruli Devi. We see no error of fact or that of law in the impugned judgment and order passed by the trial court.

9. On behalf of the appellant, it is argued that there is no motive for commission of crime, shown by the prosecution. The argument appears to be misconceived. It is clear from the evidence that appellant Mohan Ram used to give beating to his wife so much so that he had given beating to his wife before her parents. It was his mother who brought Haruli Devi back to her husband. The circumstances speak that the motive was to get rid of the deceased. Learned counsel for the appellant further contended that learned trial court has convicted the accused on the basis of the presumptions only. After going through the evidence on record, we are unable to accept this contention for the reason that in the case of circumstantial evidence, inferences are required to be derived and only circumstances are to be proved.

10. Shri Dharam Veer Sharma, learned Senior Counsel, appearing on behalf of the appellant further argued that crime number is not mentioned in the Inquest Report nor the provisions of Section 157 of Code of Criminal Procedure, 1973, were complied with. As such, the prosecution story cannot be said to have been proved beyond reasonable doubt. We have perused the record. There is no column in the inquest report pertaining to crime number. Considering the geographical terrain of the State of Uttaranchal, non-compliance of provision of Section 157 of Code of Criminal Procedure, 1973, for sending immediately a copy of report to the Magistrate, in the circumstances of the case, does not appear to be fatal to the prosecution. In the hilly areas of Uttaranchal, where there is no police station area nor is there sufficient staff or means to send report to the Magistrate immediately, flaw on the part of the Investigating Officer

cannot be said to be sufficient material to create doubt as to the truthfulness of the prosecution story.

11. In the present case, marriage of the deceased with the appellant is an admitted fact. His company with the deceased before her death is also admitted fact. Death of the deceased is not disputed. It is also not denied that she was buried in the village, as is clear from the answers of the appellant given by him in response to the evidence put to him under Section 313 of Code of Criminal Procedure, 1973. On reading the oral evidence adduced by the prosecution with the documentary evidence, as discussed above, in the light of the answers given by the appellant under Section 313 of the Code of Criminal Procedure, 1973, we are of the view that the prosecution has been successful in proving the charge framed against the appellant Mohan Ram beyond reasonable doubt. As such, there is no reason to interfere with the impugned judgment and order whereby the appellant was convicted by the trial court and sentence to life imprisonment.

12. Accordingly, the appeal is liable to be dismissed. The same is dismissed. The bail granted to the appellant is hereby cancelled. The appellant shall be taken into custody to serve out the sentence.

(Prafulla C. pant, J.) **(Rajeev Gupta, C.J.)**

Dt: 19.05.2006
Sweta